

BOARD OF APPEALS CASE NO. 4970

BEFORE THE

APPLICANT: Sprint PCS

ZONING HEARING EXAMINER

REQUEST: Special Exception to locate a  
communications tower in the AG District;  
3867 Bay Road, Street

OF HARFORD COUNTY

HEARING DATE: August 9, 2000

Hearing Advertised

Aegis: 6/28/00 & 7/5/00

Record: 6/30/00 & 7/7/00

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### ZONING HEARING EXAMINER'S DECISION

The Applicant, Sprint PCS, appeared before the Hearing Examiner as a result of an order issued by the Harford County Council sitting as the Board of Appeals.

The Applicant, Sprint PCS, originally requested a special exception pursuant to Section 267-53(l)(4) of the Harford County Code, to construct a communications tower in an Agricultural District. On February 9, 2000, the Harford County Zoning Hearing Examiner issued his decision recommending approval of the requested special exception subject to four (4) conditions. On February 28, 2000 Councilman Robert S. Wagner, requested final argument on the case. On April 18, 2000, subsequent to final argument, the County Council sitting as the Board of Appeals issued its Order remanding the case to the Hearing Examiner for further findings regarding two narrow issues. The Council stated:

“NOW, THEREFORE BE IT RESOLVED that the Harford County Council/Board of Appeals, by affirmative vote of 6-0, remands the case to the Hearing Examiner for clarification of the property address and to review the issue of potential co-location.”

The Applicant and protestants appeared before the Hearing Examiner on remand on August 9, 2000. As a preliminary matter, it was stipulated by Applicant's counsel and People's Counsel that this is an undeveloped piece of land and has no assigned address. It is accurately identified on the assessment records as “56.54 Ac, E S Bay Road, SW of Whiteford” and is more particularly identified on Tax map 11, Grid 4-D, Parcel 238. The issue of address was pointed out to the Hearing Examiner during the taking of testimony in 1999 (Transcript page 69, Lines 16 through 21) but was never corrected.

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The Hearing Examiner hereby notes that the property has no recorded street address and is identified as discussed above.

Also, as a preliminary matter, People's Counsel argued that the case should be held over to allow the Department of Planning and Zoning to hire an expert regarding the issue of co-location and to prepare a new staff report in the case. The Hearing Examiner denied the motion stating that the protestants have known the subject matter of this remand since the Council's decision to remand dated April 18, 2000 and that is sufficient time to engage the services of an expert. Moreover, while current Harford County law requires consideration on the issue of co-location and further requires the Department of Planning and Zoning to issue expert opinion on that issue, those provisions did not exist at the time this case was heard and do not apply to the case at hand. Even though the Hearing Examiner concludes that the issue of co-location does not apply to the case at hand, in deference to the County Council and in treating the remand as one for further fact finding, the Hearing Examiner proceeded to take the testimony of the Applicant on the issue of co-location.

Mr. Mohamed Benciaaboune appeared and was admitted as an expert in the field of RF Engineering. The witness testified that in all cases of tower location, Sprint PCS, seeks existing towers in order to co-locate. The ability of one company to co-locate with another is severely constrained by Federal Regulations that require each company to provide its own uninterrupted coverage, thus, even if another company's tower allows adequate service area coverage, if the location of that tower does not provide complete coverage, Sprint, for example could not satisfy its FCC licensing requirements by co-locating. The witness illustrated this concept by referring to two RF coverage maps identified as Exhibits 3 and 4. By mapping existing towers, coverage "holes" existed for 1/4 mile on Rte 136 and 1 mile on rte. 440 which were satisfactorily eliminated by erection of this tower. Even though a phone user would likely have uninterrupted service without this tower, such "holes" in coverage must be filled by any FCC license holder. While co-location can be used to fill such holes, in this case, no tower existed allowing the required coverage.

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A number of protestants appeared but their questions were generally related to the allowance of the special exception itself and did not pertain to the issues subject to the remand order of the Council. Ms. Cynthia Belcher testified that she roamed about the area making calls and that her cell phone worked in all areas. Based on this set of facts indicating uninterrupted service, she questioned the Applicant's witness regarding the need for the tower. The Applicant again testified that the FCC license under which Sprint PCS operates requires them to maintain seamless coverage and that, in order to cover the holes in coverage identified in this area, the new tower was required and no other tower was adequate in terms of co-location. Interestingly, there is another cell phone company, Nextel, that by letter dated August 7, 2000, seeks to co-locate on this tower, thus eliminating the need for at least one additional tower in this area.

Having taken further testimony on the two issues requested and finding no facts that would lead to the conclusion that the Hearing Examiner's decision dated February 9, 2000 should in any way be disturbed, this Hearing Examiner recommends approval of the requested special exception subject to the conditions set forth in the original decision of the Hearing Examiner in this case dated February 9, 2000.

Date

August 15, 2000

  
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William F. Casey

Zoning Hearing Examiner